

1 JONATHAN F. MITCHELL \*  
2 jonathan@mitchell.law  
3 Mitchell Law PLLC  
4 106 East Sixth Street, Suite 900  
Austin, Texas 78701  
(512) 686-3940 (phone)  
(512) 686-3940 (fax)

6 \* admitted *pro hac vice*  
7

8 CHRISTOPHER HELLMICH  
9 chellmich@hellmichlaw.com  
California Bar No. 224169  
10 Hellmich Law Group, PC  
11 5753-G E. Santa Ana Canyon Rd. #512  
Anaheim Hills, California 92807  
12 (949) 287-5708 (phone)  
(714) 974- 7733 (fax)

14 *Counsel for Plaintiffs and Proposed Class*  
15

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA  
18 SOUTHERN DIVISION

19  
20 **Georgia Babb; John J. Frangiamore**  
Jr.; William Happ; Aaron  
21 **Holbrook, Michelle Pecanic-Lee;**  
**David Schmus; and Abram van der**  
22 **Fluit**, as individuals, and on behalf of  
all others similarly situated,

Case No. 8:18-cv-00994-JLS-DFM

23 **Plaintiffs' Third Amended**  
**Class-Action Complaint**

24  
25 Plaintiffs,  
26

V.

**California Teachers Association;**  
**United Teachers of Los Angeles,** as  
representative of the class of all  
chapters and affiliates of the  
**California Teachers Association;**  
**National Education Association;**  
**Eric Banks, Priscilla Winslow,**  
**Erich Shiners, and Arthur A.**  
**Krantz,** in their official capacities as  
chairman and members of the  
**California Public Employment**  
**Relations Board.**

## Defendants.

1 Georgia Babb, John J. Frangiamore Jr., William Happ, Aaron Holbrook,  
2 Michelle Pecanic-Lee, David Schmus, and Abram van der Fluit are current  
3 or former public-school teachers who bring this class action on behalf of  
4 themselves and all others similarly situated, seeking redress for the defend-  
5 ants' past and ongoing violations of their constitutionally protected rights.  
6 The defendants have violated the representative plaintiffs' constitutional  
7 rights by forcing them to pay compulsory "fair share service fees" to the  
8 California Teachers Association and its chapters and affiliates as a condition  
9 of their employment, even though the representative plaintiffs do not belong  
10 to this union and do not wish to subsidize the union's activities. The repre-  
11 sentative plaintiffs seek a refund of all unlawfully collected "fair share ser-  
12 vice fees," an injunction that forbids the defendants to collect union fees  
13 from nonmembers without their consent, and costs and attorneys' fees under  
14 42 U.S.C. § 1988.

## JURISDICTION AND VENUE

16       1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28  
17 U.S.C. § 1343, and 28 U.S.C. § 1367.

18       2. Venue is proper because a substantial part of the events giving rise to  
19 the claims occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

## PARTIES

21       3. Plaintiff Georgia Babb resides in Sandoval County, New Mexico.  
22       4. Plaintiff John J. Frangiamore Jr. resides in Orange County, California.  
23       5. Plaintiff William Happ resides in Butte County, California.  
24       6. Plaintiff Aaron Holbrook resides in Riverside County, California.  
25       7. Plaintiff Michelle Pecanic-Lee resides in Los Angeles County, Cali-  
26       fornia.

8. Plaintiff David Schmus resides in Orange County, California.

9. Plaintiff Abram van der Fluit resides in Los Angeles County, California.

10. Defendant California Teachers Association (CTA) is a labor union whose offices are located at 1705 Murchison Drive, Burlingame, California 94010. It has more than 1,300 chapters and affiliates throughout the State.

11. Defendant United Teachers of Los Angeles is a local union chapter affiliated with the California Teachers Association. Its offices are located at 303 Wilshire Boulevard, 10th Floor, Los Angeles, California 90010. It is sued as representative of the class of all chapters and affiliates of the CTA.

12. Defendant National Education Association (NEA) is a labor union whose headquarters are located at 1201 16th Street NW, Washington, D.C. The NEA is affiliated with the CTA.

13. Defendants Eric Banks, Priscilla Winslow, Erich Shiners, and Arthur A. Krantz are members of the California Public Employment Relations Board, the entity that oversees public-sector collective bargaining in California and administers the State's labor and collective-bargaining laws, including Cal. Gov't Code § 3546, which the defendants are challenging as unconstitutional. They are all sued in their official capacities.

## **STATEMENT OF THE CLAIM**

14. Ms. Babb is a public-school teacher who was employed by the Nuview School District in California from 2000 through 2006. She is currently employed by the Rio Rancho Public Schools in New Mexico. While she was teaching at Nuview, Ms. Babb refused to join the CTA or its affiliates because she disapproved of their political advocacy and collective-bargaining activities and did not wish to support them in any way. Nevertheless, Ms.

1 Babb was forced to pay “fair share service fees” to the CTA as a condition of  
 2 her continued employment. *See Cal. Gov’t Code § 3546(a).*

3       15. Mr. Frangimore is a public-school teacher who currently works in a  
 4 non-union school district, but previously worked for the Compton Unified  
 5 School District (1990–96) and the Bellflower Unified School District (1996–  
 6 2016), both of which were agency shops. Mr. Frangimore refused to join the  
 7 CTA or its affiliates during that time because he disapproved of their politi-  
 8 cal advocacy and collective-bargaining activities and did not wish to support  
 9 them in any way. Nevertheless, Mr. Frangimore was forced to pay “fair  
 10 share service fees” to the CTA as a condition of his continued employment.  
 11 *See Cal. Gov’t Code § 3546(a).*

12       16. Mr. Happ is a retired public-school teacher who taught in the Cali-  
 13 fornia public schools for 27 years. Mr. Happ refused to join the CTA or its  
 14 affiliates because he disapproved of their political advocacy and collective-  
 15 bargaining activities and did not wish to support them in any way. Neverthe-  
 16 less, Mr. Happ was forced to pay “fair share service fees” to the CTA as a  
 17 condition of his continued employment. *See Cal. Gov’t Code § 3546(a).*

18       17. Mr. Holbrook is a public-school teacher who taught in the San Jacinto  
 19 Unified School District until June of 2017. He now teaches in a non-union  
 20 charter school. Mr. Holbrook refused to join the CTA or its affiliates because  
 21 he disapproved of their political advocacy and collective-bargaining activities  
 22 and did not wish to support them in any way. Nevertheless, Mr. Holbrook  
 23 was forced to pay “fair share service fees” to the CTA as a condition of his  
 24 continued employment. *See Cal. Gov’t Code § 3546(a).*

25       18. Ms. Pecanic-Lee is a public-school teacher for the Hacienda La  
 26 Puente Unified School District. Ms. Pecanic-Lee refuses to join the CTA or

1 its affiliates because she disapproves of their political advocacy and collec-  
2 tive-bargaining activities and does not wish to support them in any way.  
3 Nevertheless, Ms. Pecanic-Lee was forced to pay “fair share service fees” to  
4 the CTA as a condition of her continued employment. *See Cal. Gov’t Code*  
5 § 3546(a).

6 19. Mr. Schmus is a former public-school teacher who taught in the Hac-  
7 ienda La Puente Unified School District from 2000 through 2015. Mr.  
8 Schmus refused to join the CTA or its affiliates because he disapproved of  
9 their political advocacy and collective-bargaining activities and did not wish  
10 to support them in any way. Nevertheless, Mr. Schmus was forced to pay  
11 “fair share service fees” to the CTA as a condition of his continued em-  
12 ployment. *See Cal. Gov’t Code § 3546(a)*.

13 20. Mr. van der Fluit is a public-school teacher in the Los Angeles School  
14 District. Mr. van der Fluit refuses to join the CTA or its affiliates because he  
15 disapproves of their political advocacy and collective-bargaining activities  
16 and does not wish to support them in any way. Nevertheless, Mr. van der  
17 Fluit was forced to pay “fair share service fees” to the CTA as a condition of  
18 his continued employment. *See Cal. Gov’t Code § 3546(a)*.

19 21. The compelled subsidies that the representative plaintiffs and their  
20 fellow class members were forced to pay to the California Teachers Associa-  
21 tion and its affiliates as a condition of their employment violates their consti-  
22 tutional rights. *See Janus v. Am. Fed’n of State, Cty., & Mun. Employees,*  
23 *Council 31*, 138 S. Ct. 2448 (2018).

24 22. The Supreme Court’s ruling in *Janus* is retroactive. *See Harper v.*  
25 *Virginia Dep’t of Taxation*, 509 U.S. 86, 96 (1993) (“[A] rule of federal law,  
26 once announced and applied to the parties to the controversy, must be given

1 full retroactive effect by all courts adjudicating federal law.”). Because *Janus*  
2 is retroactive, any pre-*Janus* collection of agency fees or “fair share service  
3 fees” was unlawful and unconstitutional, regardless of whether state law or  
4 pre-*Janus* court rulings purported to authorize this conduct.

5 23. The law of California authorizes the CTA and its affiliates to extract  
6 money from non-union members as a condition of their employment. *See,*  
7 *e.g.*, Cal. Gov’t Code § 3546 (authorizing CTA to collect “fair share service  
8 fees” from nonmembers as a condition of employment) (attached to the  
9 complaint as Exhibit 1); Cal. Gov’t Code § 3546.3 (authorizing CTA to  
10 compel “religious objectors” to remit money to a union-approved charity in  
11 lieu of a “fair share service fee”) (attached to the complaint as Exhibit 2).  
12 Each of these statutes is unconstitutional, along with any other statute that  
13 authorizes or establishes agency shops in public employment, or that allows a  
14 public-employee union to garnish the wages of public employees without  
15 first securing the employee’s affirmative, written, and freely given consent.

16 24. The California Teachers Association and its affiliates were acting un-  
17 der color of state law by imposing and collecting these “fair share service  
18 fees.” *See* Cal. Gov’t Code § 3546; *Lugar v. Edmondson Oil Co.*, 457 U.S. 922  
19 (1982).

20 25. The representative plaintiffs and their fellow class members are  
21 therefore entitled to a refund of the money that was forcibly taken from them  
22 in violation of their constitutionally protected rights. Indeed, the text of 42  
23 U.S.C. § 1983 compels this result. *See* 42 U.S.C. § 1983.

24 26. The affirmative defense of qualified immunity is unavailable to pri-  
25 vate entities such as labor unions. *See* *Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

1       27. There is no “good faith” immunity for private parties who violate 42  
2 U.S.C. § 1983 by depriving others of their constitutional rights. *See Howerton*  
3 *v. Gabica*, 708 F.2d 380, 385 n.10 (9th Cir. 1983) (“[T]here is no good faith  
4 immunity under section 1983 for private parties who act under color of state  
5 law to deprive an individual of his or her constitutional rights.”).

6       28. Even if the unions could attempt to assert an affirmative defense such  
7 as qualified immunity or “good faith,” those defenses can provide immunity  
8 only from money damages, and they do not confer immunity when a plaintiff  
9 seeks equitable monetary relief such as backpay, restitution, or unjust en-  
10 richment, which the representative plaintiffs and their fellow class members  
11 are asserting here. *See Wood v. Strickland*, 420 U.S. 308, 315 n.6 (1975), over-  
12 ruled in part on other grounds, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)  
13 (“[I]mmunity from damages does not ordinarily bar equitable relief as  
14 well.”).

15       29. Finally, even if this Court were to allow the unions to assert a “good  
16 faith” defense to the plaintiffs’ section 1983 claims, the unions must *still*  
17 show that they complied with pre-*Janus* case law before they can escape lia-  
18 bility under section 1983. *See Abood v. Detroit Board of Education*, 431 U.S.  
19 209, 239–40 (1977). Under *Abood*, public-employee unions were permitted to  
20 require non-members to pay only for union activities that were non-  
21 ideological, and they were forbidden to require an employee to “contribute  
22 to the support of an ideological cause he may oppose as a condition of hold-  
23 ing a job.” *Abood*, 431 U.S. at 235; *see also R.J. Reynolds Tobacco Co. v. Shew-*  
24 *ry*, 423 F.3d 906, 916 (9th Cir. 2005). So the union must, at the very least,  
25 prove that it complied with *Abood* and pre-*Janus* court rulings before it can  
26 establish a “good faith” defense under section 1983.

1       30. The CTA and its leadership and affiliates expected the Supreme  
2 Court to overrule *Abood* in *Janus*, so the unions cannot assert that they acted  
3 in accordance with a subjective “good faith” belief that the Supreme Court  
4 would approve the legality of its actions. This factual contention is likely to  
5 have evidentiary support after a reasonable opportunity for further investiga-  
6 tion or discovery.

7       31. The CTA and its affiliates have committed the torts of conversion  
8 and trespass to chattels by appropriating money from nonunion agency-fee  
9 payers without securing their affirmative, written, and freely given consent,  
10 and they are liable in an action for tort, replevin, unjust enrichment, and res-  
11 titution. The CTA cannot defend its tortious conduct by relying on Cal.  
12 Gov't Code § 3546, because that statute is unconstitutional to the extent it  
13 purports to shield a public-employee union's compelled extraction of money  
14 from agency-fee payers. Unconstitutional statutes cannot confer immunity  
15 on tortious conduct.

16       32. The representative plaintiffs and their fellow class members are entitled  
17 to a refund of the agency fees that they were forced to pay in violation of  
18 their constitutional rights. The plaintiffs are seeking this recovery under 42  
19 U.S.C. § 1983 and state tort law, and they are demanding equitable monetary  
20 relief including backpay, restitution, and unjust enrichment. The plaintiffs  
21 are also seeking money damages to the extent permitted under immunity  
22 doctrines.

## **CLASS ALLEGATIONS**

24       33. The representative plaintiffs bring this class action under Fed. R. Civ.  
25 P. 23(b)(1), (b)(2), and (b)(3). The class includes all individuals who: (1) are  
26 or were employed by the State of California or by any public school or school

1 district located in the State of California; (2) are or were nonmembers of  
2 CTA who were compelled by CTA and its affiliates to pay “agency fees” or  
3 “fair share service fees”—regardless of whether those fees were remitted to  
4 the union, its affiliates, or a third-party organization. The class includes eve-  
5 ryone who has ever fallen within this definition, including former and retired  
6 teachers or teachers who have moved to other States, and it includes anyone  
7 who comes within the class definition at any time before the conclusion of  
8 this action.

9       34. The number of persons in the class makes joinder of the individual  
10 class members impractical.

11       35. There are questions of fact and law common to all class members.  
12 Factually, all class members are public employees and union nonmembers  
13 compelled to pay “fair share service fees” to the CTA and its affiliates as a  
14 condition of employment. Legally, the U.S. Constitution and California tort  
15 law afford the same rights to every member of the class.

16       36. The representative plaintiffs’ claims are typical of other members of  
17 the class, because each member of the class has objected to CTA member-  
18 ship yet has been forced by state law and contract provisions to financially  
19 support the CTA and its inherently political activities.

20       37. The representative plaintiffs adequately represent the interests of the  
21 class, and they have no interests antagonistic to the class.

22       38. A class action can be maintained under Rule 23(b)(1)(A) because sep-  
23 arate actions by class members could risk inconsistent adjudications on the  
24 underlying legal issues.

25       39. A class action can be maintained under Rule 23(b)(1)(B) because an  
26 adjudication determining the constitutionality of compulsory “fair share ser-

vice fees" will, as a practical matter, be dispositive of the interests of all class members.

40. A class action can be maintained under Rule 23(b)(3) because the common questions of law and fact identified in the complaint predominate over any questions affecting only individual class members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because, among other things, all class members are subjected to the same violation of their constitutional rights, but the amount of money involved in each individual's claim would make it burdensome for class members to maintain separate actions.

## **CAUSES OF ACTION**

41. The representative plaintiffs and their fellow class members are suing the CTA and its affiliates, and the members of the Public Employment Relations Board under 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, each of which supplies a cause of action for the individual and class-wide relief that they are requesting.

42. The representative plaintiffs and their fellow class members are also suing the CTA and its affiliates under the state-law actions of conversion, trespass to chattels, replevin, unjust enrichment, restitution, and any other legal or equitable cause of action that offers relief for this unlawful seizure of her personal property. The representative plaintiffs invoke the supplemental jurisdiction of this court over those state-law claims. *See* 28 U.S.C. § 1337.

## **DEMAND FOR RELIEF**

43. The representative plaintiffs respectfully request that the court:

- a. certify a plaintiff class of all nonunion members who have been forced to pay agency fees or “fair share service fees” to the Cal-

1                 ifornia Teachers Association or its affiliates or a union-approved  
2                 third-party organization as a condition of their employment;

3                 b. certify a defendant class of all chapters and affiliates of the Cali-  
4                 fornia Teachers Association;

5                 c. declare that the representative plaintiffs and their fellow class  
6                 members have a constitutional right to decline to join or finan-  
7                 cially support a public-employee union, and that they cannot be  
8                 forced to pay money to a union or a union-approved third-party  
9                 entity as a condition of their employment;

10                 d. declare that state tort law protects the right of the representa-  
11                 tive plaintiffs and their fellow class members not to have their  
12                 wages garnished or redirected by the CTA or its affiliates with-  
13                 out their affirmative, written, and freely given consent, and that  
14                 any federal or state law or collective-bargaining agreement that  
15                 purports to override these protections of state tort law by allow-  
16                 ing the CTA to help itself to the wages and paychecks of school  
17                 employees—or that compels school employees to consent the  
18                 garnishment of their wages by the CTA or its affiliates as a con-  
19                 dition of their employment—is unconstitutional and without le-  
20                 gal effect;

21                 e. declare Cal. Gov’t Code § 3546 unconstitutional because it al-  
22                 lows public-employee unions to extract “fair-share service  
23                 fees” from nonmembers as a condition of their employment,  
24                 and permanently enjoin the members of the Public Employment  
25                 Relations Board, and all of their officers, agents, servants, em-  
26                 ployees, attorneys, and any other person or entity in active con-

1 cert or participation with them, from enforcing Cal. Gov't Code  
2 § 3546, or any other provision of state law that authorizes or en-  
3 forces public-employee agency shops;

- 4 f. declare that all collective-bargaining agreements that compel  
5 the representative plaintiffs and their fellow class members to  
6 pay "agency fees" or "fair share service fees" to the CTA or its  
7 affiliates as a condition of their employment violate the consti-  
8 tutional rights of the representative plaintiffs and their fellow  
9 class members;
- 10 g. order the CTA and its affiliates, including the NEA, to refund  
11 all agency fees or "fair share service fees" that were unconstitu-  
12 tionally or unlawfully extracted from the representative plain-  
13 tiffs and their fellow class members;
- 14 h. permanently enjoin the CTA and its affiliates, along with their  
15 officers, agents, servants, employees, attorneys, and any other  
16 person or entity in active concert or participation with them,  
17 from taking or redirecting any type of money from the repre-  
18 sentative plaintiffs, their fellow class members, or any other  
19 public employee without first obtaining the employee's affirma-  
20 tive, written, and freely given consent;
- 21 i. permanently enjoin all of the defendants, along with their offic-  
22 ers, agents, servants, employees, attorneys, and any other per-  
23 son or entity in active concert or participation with them, from  
24 enforcing any provision of California law, or any provision of a  
25 collective-bargaining agreement, that requires any payment of  
26

1                   money as a consequence for exercising one's constitutional  
2                   right not to join or financially support a public-employee union;  
3                   j. award costs and attorneys' fees under 42 U.S.C. § 1988;  
4                   k. grant all other relief that the Court may deem just, proper, or  
5                   equitable.

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8  
9 TALCOTT J. FRANKLIN\*  
10 Texas Bar No. 24010629  
11 Talcott Franklin PC  
12 1920 McKinney Avenue 7th Floor  
13 Dallas, Texas 75201  
14 (214) 736-8730 (phone)  
15 (800) 727-0659 (fax)  
16 tal@talcottfranklin.com

17 CHRISTOPHER HELLMICH  
18 California Bar No. 224169  
19 Hellmich Law Group, PC  
20 5753-G E. Santa Ana Canyon Rd. #512  
21 Anaheim Hills, California 92807  
22 (949) 287-5708 (phone)  
23 (714) 974- 7733 (fax)  
24 chellmich@hellmichlaw.com

25 \* admitted *pro hac vice*

26 Dated: February 27, 2019

Respectfully submitted.

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL\*  
Texas Bar No. 24075463  
Mitchell Law PLLC  
106 East Sixth Street, Suite 900  
Austin, Texas 78701  
(512) 686-3940 (phone)  
(512) 686-3941 (fax)  
jonathan@mitchell.law

BRADLEY BENBROOK  
California Bar No. 177786  
Benbrook Law Group, PC  
400 Capitol Mall, Suite 2530  
Sacramento, California 95814  
(916) 447-4900 (phone)  
(916) 447-4904 (fax)  
brad@benbrooklawgroup.com

*Counsel for Plaintiffs and  
the Proposed Class*

## CERTIFICATE OF SERVICE

I certify that on February 27, 2019, I served this document by CM/ECF upon:

SCOTT A. KRONLAND  
JEFFREY B. DEMAIN  
REBECCA C. LEE  
Altshuler Berzon LLP  
177 Post Street Suite 300  
San Francisco, CA 94108  
415-421-7151 (phone)  
415-362-8064 (fax)  
[skronland@altber.com](mailto:skronland@altber.com)  
[jdemain@altber.com](mailto:jdemain@altber.com)  
[rlee@altshulerberzon.com](mailto:rlee@altshulerberzon.com)

*Counsel for the Union Defendants*

PETER H. CHANG  
Office of the Attorney General  
California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
San Francisco, California 94102-7004  
(415) 510-3776 (phone)  
(415) 703-1234 (fax)  
[peter.chang@doj.ca.gov](mailto:peter.chang@doj.ca.gov)

*Counsel for the State Defendants*

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
*Counsel for Plaintiffs and Proposed Class*